

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of OSCAR B. GARZA and DEPARTMENT OF JUSTICE,
IMMIGRATION & NATURALIZATION SERVICE, San Antonio, TX

*Docket No. 99-891; Submitted on the Record;
Issued May 8, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he has greater than a 19 percent permanent impairment for loss of use of the right leg, for which he received a schedule award.

On May 17, 1995 appellant, a 30-year-old enforcement officer, injured his right ankle when the wooden deck on which he was standing collapsed. Appellant filed a claim for benefits on May 18, 1995, which the Office of Workers' Compensation Programs accepted for right ankle sprain.

On July 7, 1998 appellant filed a Form CA-7 claim for a schedule award based on partial loss of use of his right leg.

In order to determine the extent of appellant's permanent partial impairment due to the May 17, 1995 employment injury, the Office referred him for an impairment evaluation with Dr. Daniel C. Valdez, a Board-certified orthopedic surgeon. In a report dated October 21, 1998, Dr. Valdez found that appellant had a 19 percent permanent disability of the right lower extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition). In arriving at the 19 percent impairment rating, Dr. Valdez calculated an average of dorsiflexion values of 14 degrees, for a 0 percent impairment pursuant to Table 42 at page 78 of the A.M.A., *Guides*; an average of plantar flexion values of 33 degrees, for a 0 percent impairment pursuant to Table 42 at page 78 of the A.M.A., *Guides*; an inversion of 25 degrees for a 0 percent impairment pursuant to Table 43 at page 78 of the A.M.A., *Guides*; and an eversion of 10 degrees for a 2 percent impairment pursuant to Table 43 at page 78 of the A.M.A., *Guides*, for a total right ankle, lower extremity impairment of 2 percent. Dr. Valdez combined this total with a 17 percent right lower extremity impairment derived from ankle plantar flexion pursuant to Table 39, page 77 of the A.M.A., *Guides*. Dr. Valdez found a zero percent impairment with regard to ankle dorsiflexion, ankle inversion and ankle eversion pursuant to Table 39, page 77 of the A.M.A., *Guides*, and a zero percent impairment with regard to nerve impairment pursuant to Table 68, page 89 of the *Guides*.

In a memorandum and schedule award worksheet dated November 22, 1998, the Office medical adviser found that appellant had a 19 percent permanent impairment based on loss of use of his right lower extremity. Relying on Dr. Valdez's findings and conclusions, the Office medical adviser accorded appellant a 2 percent impairment based on loss of range of motion, eversion, pursuant to Table 43, page 78 of the A.M.A., *Guides*, together with a 17 percent motor deficit of the ankle based on atrophy/decreased strength, plantar flexion, pursuant to Table 39, page 77 of the A.M.A., *Guides*.

On December 9, 1998 the Office granted appellant a schedule award for a 19 percent permanent impairment for loss of use of his right leg for the period October 26, 1998 to November 13, 1999, for a total of 54.72 weeks of compensation.

The Board finds that appellant has no more than a 19 percent permanent impairment for loss of use of the right leg, for which he received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.³ However, neither the Act nor its regulations specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* (fourth edition) have been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.⁴

In the instant case, the Office determined that appellant had a 19 percent permanent impairment of his right leg by adopting the findings of the Office medical adviser, who determined the precise impairment rating by taking Dr. Valdez's calculations based on loss of range of motion, eversion, of the right ankle and atrophy/decreased strength of plantar flexion, of the right ankle. The Office medical adviser then applied these findings to the applicable tables of the A.M.A., *Guides*, and added them together to arrive at the total percentage of impairment in appellant's right leg based on the applicable figures and tables of the A.M.A., *Guides*.

The Board concludes that the Office medical adviser correctly applied the A.M.A., *Guides* in determining that appellant has no more than a 19 percent permanent impairment for loss of use of his right leg for which he has received a schedule award from the Office and that appellant has failed to provide probative, supportable medical evidence that he has greater than the 19 percent impairment already awarded.

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.304.

³ 5 U.S.C. § 8107(c)(19).

⁴ *Thomas D. Gunthier*, 34 ECAB 1060 (1983).

The decision of the Office of Workers' Compensation Programs dated December 9, 1998 is hereby affirmed.

Dated, Washington, D.C.
May 8, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member